IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

GIFT TAX REFERENCE No 1 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

@

COMMISSIONER OF GIFT-TAX

Versus

MANEKLAL HARGOVANDAS PATEL

Appearance:

1. GIFT TAX REFERENCE No. 1 of 1991

MRS MONA BHATT for Petitioner No. 1

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 11/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference at the instance of the revenue, the following questions have been referred for our opinion in respect of assessment year 1983-84:-

(i) "Whether, the Appellate Tribunal is right in law and on facts in deleting an amount of Rs.90,247/- being gift of earlier year aggregated to the amount of gift made for A.Y. 1983-84?"

(ii) "Whether, the Appellate Tribunal is right in law and on facts of the case in arriving at the conclusion that the amount of Rs.90,247/- cannot be added to gift for the assessment year 1983-84?"

2. Heard Ms. Mona Bhatt, learned counsel for the applicant- revenue. Though served, none appears for the respondent - assessee.

3. At the hearing of this Reference, our attention is invited to the decision dated 4-7-2002 of this Court in GTR No.2 of 1991 which squarely covers the controversy raised in the present reference also.

4. For the assessment year 1983-84 also, the GTO passed the assessment order against the assessee which was confirmed in appeal by the Appellate Assistant Commissioner relying on his earlier order for assessment year 1981-82 in the assessee's own case. The Income-tax Appellate Tribunal has in its order for assessment year 1981-82 held that there was no gift in respect of reduction of share of the assessee from 25% to 4% as the assessee was 80 years of age and was totally blind and, therefore, physically unfit for continuing as a partner of the firm and, therefore, it was necessary to transfer his right to partnership profits to the other partners. In view of the said finding for the year 1981-82, the Tribunal also held for the assessment year 1983-84 that the amount of Rs.90,247/- could not be added to gift for the assessment year 1983-84.

5. The ITAT's order for assessment year 1981-82 had given rise to GTR No.2 of 1991. In our decision dated 4-7-2002 we have considered all the relevant facts and the decisions of the Apex Court in CGT vs. Chhotalal Mohanlal (1987) 166 ITR 124, CGT vs. T.M. Louiz (2000) 245 ITR 831 and CGT vs. D.C. Shah & Ors. (2001) 249 ITR 518. After considering the said decisions, this Court has held that there was no gift upon reduction of the share of the assessee from 25% to 4%.

Following the aforesaid decision, our answer to question No.1 is in the affirmative i.e. in favour of the assessee and against the revenue, and our answer to question No.2 is also in the affirmative i.e. in favour of the assessee and against the revenue.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J) (K.A. Puj,J)

zgs/-